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IN THE

Supreme Court of the United States

October Term 1940

No. [redacted] 66

WILLIAM B. MILLIKEN, MARGARET M. MILLIKEN, TEXAS PRODUCTION COMPANY, a Corporation, and THE OHIO OIL COMPANY, a Corporation,

Petitioners,

vs.

VIOLET L. MEYER, Both Individually and as Administratrix with the Will Annexed of the Estate of Raymond D. Meyer, Deceased, *Respondent.*

PETITION FOR WRIT OF CERTIORARI

AND

BRIEF IN SUPPORT THEREOF.

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IN THE

Supreme Court of the United States

October Term 1940

No.

WILLIAM B. MILLIKEN, MARGARET M. MILLIKEN, TEXAS PRODUCTION COMPANY, a Corporation, and THE OHIO OIL COMPANY. a Corporation,

Petitioners,

vs.

VIOLET L. MEYER, Both Individually and as Administratrix with the Will Annexed of the Estate of Raymond D. Meyer, Deceased, *Respondent.*

PETITION FOR WRIT OF CERTIORARI.

SUMMARY STATEMENT OF MATTER INVOLVED.

Petitioners seek a review of a final judgment of the Colorado Supreme Court holding void a Wyoming judgment and contend that they have been deprived of the right, existing under Section 1, Article IV of the United States Constitution, to have the Wyoming judgment given full faith and credit by the Colorado courts.

The Wyoming judgment is in personam and was rendered upon the personal service of process in Colorado upon an individual domiciled in Wyoming. The Colorado Supreme

Court held the judgment void, not because of lack of jurisdiction over the person of the defendant, but because of an alleged conflict between the findings of the Wyoming court and its judgment.

STATEMENT OF FACTS.

This action was brought by respondent Violet L. Meyer in the district court of the City and County of Denver, Colorado, to obtain equitable relief from a judgment of the district court of Carbon County, Wyoming, entered on July 11, 1931, against respondent's intestate, R. D. Meyer, in an action wherein W. B. Milliken was plaintiff and Transcontinental Oil Company and R. D. Meyer were defendants. The complaint asserts (R. 55) that the Wyoming judgment is void because of a lack of jurisdiction over the person of the defendant R. D. Meyer, who allegedly was a resident of Colorado and was served in that state, and because of an alleged conflict between the findings of the court and the judgment in that the court found valid an agreement between W. B. Milliken and Transcontinental Oil Company whereby Milliken assigned to the Transcontinental company his claim against Meyer and after such finding the court gave judgment in favor of Milliken and against Meyer on the assigned claim.

In their answers the petitioners allege that the Wyoming court had jurisdiction over Meyer because he was domiciled in Wyoming (R. 103) and under applicable and constitutional Wyoming statutes was personally served with process in Colorado (R. 104-105). It is further asserted that the Wyoming judgment is not void because of irregularities or inconsistencies and under Section 1, Article IV of the United States Constitution it must be given full faith and credit in the Colorado court (R. 109).

The Wyoming action was brought by W. B. Milliken against Transcontinental Oil Company and R. D. Meyer upon

the theory that the parties were joint adventurers in certain oil land operations and that the defendants had not accounted to the plaintiff (R. 7). The Transcontinental Company filed its answer (R. 16). Upon the affidavit of Milliken's attorney that Meyer was a resident of Wyoming and concealed himself to avoid the service of process (R. 9), summons was personally served upon Meyer in Denver (R. 15), Colorado. in accordance (R. 10, 14) with the provisions of Sections 5636 and 5641 of the 1920 Wyoming Compiled statutes (Wyoming 1931 R. S., 89-817, 89-822). Meyer, upon advice of counsel, did not appear (R. 54). After trial the Wyoming court found in favor of Transcontinental Oil Company and, after entry of the default of Meyer. found that he and Milliken were joint adventurers who should share equally in the profits of the oil land operations (R. 32-39). The court further found that Meyer had received 4/64ths of such profits and Milliken had received 2/64ths. Judgment was entered against Meyer in the sum of $30,392.88.

The petitioners The Ohio Oil Company and Texas Production Company have succeeded to the interest of the Transcontinental Oil Company (R. 5-6). W. B. Milliken has assigned his rights in the Wyoming judgment to the petitioner Margaret M. Milliken (R. 120). R. D. Meyer died on August 17, 1935, and the respondent Violet L. Meyer was, by the probate court of the City and County of Denver, Colorado, appointed administratrix with the will annexed of his estate (R. 3).

In the first trial of this cause the Colorado district court found for the petitioners and dismissed the complaint (R. 140-143). Upon review by writ of error in the Colorado Supreme Court such judgment was reversed upon the ground that the Wyoming judgment was void because of a conflict between the findings of the Wyoming court and its judgment (R. 237).

A petition for certiorari was denied by this court on

October 10, 1938, upon the ground that there was no final judgment (*Milliken, et al., vs Meyer, etc.*, 305 U. S. 598, 59 S. Ct. 63).

Upon remand to the Colorado district court no new evidence was introduced and no change was made in the pleadings. The district court refused to enter the judgment presented by respondent (R. 181) but did enter judgment pursuant to the remittitur of the Colorado Supreme Court declaring the Wyoming judgment null and void and giving judgment against the petitioners herein in the sum of $5,746.17 representing proceeds from the 1/64th interest paid to the Millikens by the oil companies after the entry of the Wyoming judgment (R. 190-195).

Respondent Meyer then sued out a writ of error in the Colorado Supreme Court contending that the district court erred in refusing to enter the form of judgment which she submitted (R. 197). The petitioners assigned cross error asserting that the court erred in failing to give full faith and credit to the Wyoming judgment as required by Section 1, Article IV of the Constitution of the United States (R. 199-210).

The Colorado Supreme Court on February 13, 1940, affirmed the judgment of the district court (R. 247). A timely petition for rehearing presented by the Millikens and the oil companies was denied on March 4, 1940 (R. 249).

JURISDICTION.

The petitioners say that the Supreme Court of the United States has jurisdiction to review this cause on certiorari because:

1. This petition for certiorari is filed under the provisions of the Act of February 13, 1925, c. 229, Sec. 1 (43 Stat. 937, Judicial Code, Section 237, 28 USCA 344 b), wherein it is provided that it shall be competent for the

Supreme Court by certiorari to review a final judgment of the highest court of a state where any title, right, privilege or immunity is expressly set up or claimed by either party under the constitution. In this cause the petitioners have asserted the right under the Constitution of the United States to have the Wyoming judgment given full faith and credit by the courts of Colorado.

2. The questions involved are substantial because the Colorado courts have held void and enjoined the enforcement of a Wyoming judgment for $30,392.88 upon the sole ground that alleged inconsistencies and irregularities in that judgment rendered it void on its face and thus have denied to the petitioners a substantial right under the Constitution of the United States. The Wyoming judgment was entered by a court which had jurisdiction of the parties and the subject matter. Mere irregularities or inconsistencies which could have been corrected on appeal do not make such judgment void on its face.

3. The federal question was first raised by the petitioners William B. Milliken and Margaret M. Milliken in their amended answer wherein they pleaded (R. 109) that the Wyoming judgment is entitled to full faith and credit in Colorado by virtue of Section 1, Article IV of the Constitution of the United States. The federal question was first raised by the petitioners The Ohio Oil Company and Texas Production Company by their assignments of cross error in the Colorado Supreme Court (R. 203, 207). The Colorado Supreme Court denied the claim of the petitioners that the Wyoming judgment was entitled to full faith and credit by determining that the said judgment was void on its face, not because of any lack of jurisdiction over the parties or subject matter, but because of alleged irregularities and inconsistencies in that judgment.

4. Final judgment in this case was entered by the Colo-

rado Supreme Court on February 13, 1940. Rehearing was denied on March 4, 1940.

QUESTIONS PRESENTED.

1. May the Colorado courts refuse to give full faith and credit to a Wyoming judgment because of certain alleged errors and mistakes of law committed by the Wyoming court?

2. Did the Wyoming court have jurisdiction to render a judgment in personam upon the service of process in Denver, Colorado, on a defendant whose domicile was in the state of Wyoming?

REASONS RELIED ON FOR ALLOWANCE FOR WRIT OF CERTIORARI.

The reasons relied on for the allowance of this writ of certiorari are as follows:

1. By denying full faith and credit to the Wyoming judgment the Colorado court has denied to the petitioners their right under Section 1, Article IV of the United States Constitution to have such judgment given full faith and credit.

Roche v. McDonald, 275 U. S. 449, 48 S. Ct. 142.
Titus v. Wallick, 306 U. S. 282, 59 S. Ct. 557.

2. The decision of the Colorado Supreme Court that the Wyoming judgment was void because of irregularities and mistakes of law is not in accord with applicable decisions of this Court holding that irregularities or mistakes of law which could have been corrected upon appeal do not justify the courts of one state in refusing to give full faith and credit to a judgment of the courts of another state.

Fauntleroy v. Lum, 210 U. S. 230, 28 S. Ct. 641.
Chandler v. Peketz, 297 U. S. 609, 56 S. Ct. 602.

3. A judgment in personam may be given by a Wyo-

ming court upon personal service of process outside of the state on a resident of Wyoming who has concealed himself to avoid the service of process.

McDonald v. Mabee, 243 U. S. 90, 37 S. Ct. 343.
Wuchter v. Pizzutti, 276 U. S. 13, 48 S. Ct. 259.
Restatement of The Law of Conflict of Laws, Sections 77, 79.

Wherefore, because of the importance of the questions involved and for the reasons hereinabove set forth your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Court directed to the Supreme Court of the State of Colorado commanding said court to secure and send to this Court on a day certain to be therein designated, a full and complete transcript of the record and proceedings of the court in the case of your petitioners which was therein entitled Violet L. Meyer, both individually and as administratrix with the will annexed of the estate of Raymond D. Meyer, deceased, plaintiff in error, vs. William B. Milliken, Margaret M. Milliken, Texas Production Company, a corporation, and The Ohio Oil Company, a corporation, defendants in error, No. 14534, to the end that said cause may be reviewed and determined by this Court as provided by Section 237 of the Judicial Code as amended by the Act of February 13, 1925, and the rules of this Court and that your petitioners may have such other and further relief or remedy in the premises as this Court may deem appropriate and in conformity with the provi-

sions of said Code and the rules of this Court and that the judgment of the Supreme Court of Colorado be reversed.

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BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

OPINIONS OF COURT BELOW.

The first opinion of the Colorado Supreme Court is reported under the style of *Meyer v. Milliken, et al.*, 101 Colo. 564, 76 P. (2d) 420 (See also R. 211-237). The second and last opinion of that court in this cause has not as yet been officially reported but may be found at pages 239-246 of the record and in the Pacific Reporter advance sheets for April 12, 1940, at page 151 (100 P. (2d) 151).

JURISDICTION.

Jurisdiction is invoked under Section 237 of the Judicial Code (28 USCA 344 b.). The petitioners claim that they have been deprived of the right existing under Section 1, Article IV Constitution of the United States to have a valid and subsisting Wyoming judgment given full faith and credit by the Colorado courts.

The asserted federal right has been denied and the sufficiency of the grounds of denial are for this Court to decide (*Titus v. Wallick*, 306 U. S. 282, 291, 59 S. Ct. 557, 562; *Huntington v. Attrill*, 146 U. S. 657, 684, 13 S. Ct. 224, 234; *American Express Company v. Mullins*, 212 U. S. 311, 313, 29 S. Ct. 381, 382; *West Side Belt Railroad Company v. Pittsburgh Construction Company*, 219 U. S. 92, 99, 31 S. Ct. 196, 198).

STATEMENT OF FACTS.

This action was brought by respondent against the petitioners to secure relief from a judgment of the district court of Carbon County, Wyoming, upon the ground that the Wyoming judgment is void because of lack of jurisdiction over the judgment debtor (respondent's intestate) and because the judgment is contrary to the findings of the court.

Consideration must be first given to the Wyoming judgment. Petitioner W. B. Milliken brought suit in the district

court of Carbon County, Wyoming, on July 6, 1927 (R. 6) against R. D. Meyer, and Transcontinental Oil Company alleging conspiracy and fraud to deprive him of his rights under a joint adventure agreement relating to certain oil lands (R. 7). The Transcontinental Company filed its answer (R. 16). Defendant Meyer was personally served with summons in Denver, Colorado, on March 30, 1928 (R. 14-15).

The applicable Wyoming statutes (now Wyoming R. S. 1931, Sections 89-817, 89-822) provide (R. 11-14):

> Sec. 5636, Wyoming Compiled Statutes, 1920—"Service by Publication."
>
> "Service by publication may be had in either of the following cases:
>
> * * *
>
> 6. In actions where the defendant, being a resident of this state, has departed from the county of his residence with the intent to delay or defraud his creditors, or to avoid the service of a summons, or keeps himself concealed with like intent."
>
> Sec. 5641, Wyoming Compiled Statutes, 1920—Personal Service Out of State.
>
> "In all cases where service may be made by publication under the provisions of this chapter, personal service of a copy of the summons and the petition in said action may be made out of the state, and such summons when issued for service out of the state, shall be returnable at the option of the party having it issued, on the second, third or fourth Monday after its date, and shall require the defendant or defendants named therein to answer the petition in said action on or before the third Saturday after the return day named in said summons."

C. R. Ellery, attorney for Milliken, filed in the case his "Affidavit for Constructive Service" (R. 9) stating that Meyer was a resident of Wyoming, living a part of the time

in Denver, Colorado, and a part of the time at Fort Steele, Carbon County, Wyoming, although defendant as aforesaid was and for many years had been a resident of said Fort Steele, Carbon County, Wyoming, and that since the filing of the action (R. 9):

> " * * * said defendant has remained out of the state of Wyoming, and now conceals himself to avoid summons issued out of the above named court in this cause, and since the filing of this suit, said defendant has and he does now so conceal himself that such process cannot be served upon him."

Meyer, upon the advice of his attorney (R. 54), made no appearance in the case. However he testified as a witness since his deposition was taken by the plaintiff (R. 137-138).

The default of Meyer was entered and, after trial of the case without a jury, the court, in a decree dated July 11, 1931 (R. 32), specifically found that there was no joint adventure agreement between Milliken and the Transcontinental Company; that certain agreements dated May 3, 1924, executed by Milliken and the Transcontinental Company were valid and had been performed by the Transcontinental Company; that the action should be dismissed with prejudice against the Transcontinental Company; that the action of the court under the default of Meyer was (R. 34) "without prejudice to the findings and judgment in favor of said defendant corporation;" and that "as between the plaintiff, W. B. Milliken, and the defendant, R. D. Meyer, the court finds generally in favor of the plaintiff and against the defendant" (R. 34). The court then proceeded to find that there was a joint adventure agreement between Milliken and Meyer in which each (R. 35) "was entitled to share equally in any money, profits, oil and/or gas rights and interests, or other real or personal property" derived therefrom, that the Transcontinental Company had by written agreement under-

taken to pay Meyer a 1/16th part of the net profits and Milliken a 1/32nd part of the net profits from the oil and gas operations on the land covered by the joint adventure agreement; that in the total of 6/64th of the net profits to be paid by the Transcontinental Company Meyer and Milliken should share equally, *i. e.*, each should have 3/64th (R. 36); that Meyer had actually received 4/64ths and had failed to account to Milliken for his 1/64th (R. 36); that said 1/64th with interest amounted to $30,392.88 (R. 37). Judgment was then rendered against Meyer and in favor of Milliken in the amount of $30,392.88 with interest, and Meyer was restrained from receiving, and the Transcontinental Company was enjoined from paying to Meyer, more than 3/64th of the net profits (R. 38). The judgment was approved as to form by the attorneys for the Transcontinental Oil Company (R. 39).

The petitioners The Ohio Oil Company and Texas Production Company succeeded to the rights and obligations of Transcontinental Oil Company (R. 4, 39)). Milliken assigned his entire interest in the judgment to his wife, the petitioner Margaret M. Milliken (R. 121). By August 15, 1935, The Ohio Oil Company paid to Margaret M. Milliken a total of $4,829.49 on account of the 1/64th interest adjudged by the Wyoming Court to be the property of her assignor (R. 122-123).

R. D. Meyer was at all times fully informed of the entry of the Wyoming judgment of July 11, 1931, and of the fact that The Ohio Oil Company was withholding from him the 1/64th of the net profits referred to therein (R. 98).

After the death of R. D. Meyer on August 17, 1935, the respondent was appointed administratrix with the will annexed of his estate by the probate court of the City and County of Denver, Colorado, and under a permissive order of said probate court brought the instant action (R. 3).

The pleadings set out the facts as alleged above. The

complaint alleges that the Wyoming judgment is void because "rendered by said Court without jurisdiction of the person of said deceased" and because it "does not even follow nor conform to, but contravenes the findings of the Court as set forth in said decree" (R. 55) and that the said judgment violates Sec. 6, Art. I of the Wyoming Constitution and the Fifth and Fourteenth Amendments of the United States Constitution by taking property without due process (R. 55-56).

The answer of the Millikens alleges that the Wyoming judgment is entitled to full faith and credit under the Federal Con titution and that a refusal of such full faith and credit "would constitute a violation of said Article IV, Section 1 of the Constitution of the United States, and the rights of these defendants, and each of them, thereunder" (R. 109).

Upon trial to the court without a jury certain facts were adduced from the pleadings and the evidence in addition to those heretofore mentioned.

H. N. Woodman, a shorthand reporter, testified that he took the oral deposition of R. D. Meyer pursuant to a dedimus issued on January 28, 1931, in a case pending in Carbon County, Wyoming, wherein W. B. Milliken was plaintiff and Transcontinental Oil Company and R. D. Meyer were the defendants and that in response to a question as to whether he held his legal residence in Wyoming, Meyer stated (R. 138):

> "Well, of course, that is a question that I am not qualified to properly elucidate. I can only say, for your information, that I am a taxpayer in Carbon County, Wyoming, and that I have always had a feeling that some day I might return there and re-establish my association in Wyoming. In fact I have never voted in Denver."

Chap. 62, Session Laws of Wyoming, 1921, provides that

in connection with oil and gas prospector's leases preference shall be given (R. 139) "to persons who are resident citizens and taxpayers of the state * * * "

The Deputy Commissioner of Public Lands for Wyoming identified certain applications pertaining to Wyoming lands and addressed to the Commissioner of Public Lands for the State of Wyoming. These applications, as defendants' exhibits 2 to 13 inclusive, were admitted in evidence (R. 139-140, 164-165). Exhibits 5, 6, 7, and 8 are each an application for a prospector's lease and are severally dated April 6, 1927, March 16, 1928, and April 1, 1929. Each is made by R. D. Meyer, Trustee, is signed by R. D. Meyer, Trustee and contains the statement (R. 140, 164-165):

> "I am a resident of the State of Wyoming. I am a voter and taxpayer in Carbon County, Wyoming."

Exhibit 10 is a similar application dated March 17, 1930, and contains the following (R. 140, 165):

> "I have been a bona fide resident and taxpayer of Wyoming for 40 years."

Likewise Exhibit 11, dated April 4, 1931, contains this statement (R. 140, 165):

> "I have been a bona fide resident and taxpayer of Wyoming for 30 years."

A similar application is Exhibit 12 which is dated April 9, 1932, and says (R. 140, 165):

> "I have been a bona fide resident and taxpayer of Wyoming for 20 years."

On May 3, 1924, two agreements were executed by W. B. Milliken and Transcontinental Oil Company. One provided for the receipt by Milliken of 1/32nd of the net production from the Hamilton Structure (part of the oil lands covered by the joint adventure agreement between Milliken and Meyer) (R. 17, 25-26). The other was an assignment by

W. B. Milliken and Carl S. Milliken to Transcontinental Oil Company of "all and singular, their right, interest, claim and demand, of every kind or nature, as against the said R. D. Meyer in any wise pertaining to" the lands covered by the joint adventure agreement provided however that Transcontinental should not compromise or settle any such claims with Meyer without securing a full release of all claims held by Meyer against Milliken and that the Millikens could interpose the assigned claims as a defense to any claim asserted against them by Meyer (R. 27-28).

The Colorado District Court found that the Wyoming statutes relating to constructive service were applicable and constitutional; that R. D. Meyer was legally domiciled in the State of Wyoming at the date of the commencement of the Wyoming action, at the date of the filing of the affidavit for constructive service and at the date of the decree and judgment therein; that the Wyoming court had jurisdiction over the person of the defendant Meyer and had jurisdiction to enter the judgment; that the alleged inconsistency between the judgment and the findings could have been corrected on appeal and while they may have constituted error do not make the judgment void on its face; that the Wyoming judgment is a valid and subsisting judgment of full force and effect as to all parties concerned; and that the suit constituted a collateral attack on the Wyoming judgment (R. 140-143).

Judgment was entered for the dismissal of the cause (R. 144).

Upon writ of error the Colorado Supreme Court reversed the judgment. (R. 237). In its opinion, after reviewing the facts, that court said (R. 230):

> "* * * we need not concern ourselves with the question of whether or not the Wyoming court had jurisdiction of the parties and subject matter in the case before it, which we do not decide."

The court then held the judgment void on its face on the ground that by finding in favor of the validity of the May 3, 1924, contract between the Millikens and the Transcontinental Oil Company wherein the Millikens assigned to the Transcontinental their claims against Meyer with the provisos noted above, the Wyoming court deprived itself and Milliken of (R. 231) "any basis upon which it could predicate the judgment it later, and by the same decree, entered against Meyer." The Colorado Supreme Court said (R. 232):

> "When the Wyoming court entered a personal judgment against Meyer in favor of Milliken, whom it found had transferred and assigned his every claim against Meyer, it recorded an irreconcilable contradiction of the terms of the finding and decree, and these are so inconsistent as to result in a mere nullity, and particularly the judgment rendered in favor of Milliken and against Meyer."

(R. 234). "* * * (the Wyoming judgment) is void on its face because pronounced by a court which had deprived itself of jurisdiction to enter the particular judgment against Meyer. Judgments must conform to the findings of the court in such a substantial particular."

The judgment was reversed and the cause remanded (R. 236).

> "* * * with directions to enter judgment in favor of plaintiff and against W. B. Milliken and Margaret Milliken, and each of them, and the Texas Production Company and The Ohio Oil Company and each of them, for any and all monies shown to have been paid the Millikens by virtue of the Wyoming decree and that an order be entered enjoining the defendants, the Millikens, from in any way interfering with the collection by plaintiff of the proceeds

from the interest herein involved or to be involved in the future."

A petition for writ of certiorari to review the judgment of the Colorado Supreme Court was denied by this Court on October 10, 1938, because of the lack of a final judgment (*Milliken et al. v. Meyer etc.*, 305 U. S. 598, 59 S. Ct. 63).

Upon remand to the Colorado district court no additional evidence was introduced and no change was made in the pleadings. The respondent Meyer tendered a form of judgment which was rejected (R. 181, 188-190). On December 27, 1938, the district court entered final judgment specifically adjudging the Wyoming judgment to be void. We quote from the decree (R. 192):

> "It Is Accordingly Considered, Ordered, Adjudged and Decreed,
>
> 1. That the judgment of the District Court of Carbon County, Wyoming, entered on July 11, 1931, in that certain action entitled W. B. Milliken, plaintiff, v. Transcontinental Oil Company, a corporation, and R. D. Meyer, defendants, the same being docket No. 2148 in said Court, is null, void and of no effect."

The judgment further required the petitioners to pay to the respondent $5,746.17 with interest and provided that if Texas Production Company paid said amount it should have judgment against the other petitioners and that if The Ohio Oil Company paid, it should have judgment against the Millikens (R. 193). The Millikens were restrained from interfering with the collection by the respondent of 1/16th of the net profits from the oil and gas operations (R. 193-194).

The respondent then took the cause to the Colorado Supreme Court by writ of error contending that the judgment did not comply with the remittitur (R. 197). The petitioners, as permitted by the Colorado practice, filed as-

signments of cross error alleging that the district court erred in not giving full faith and credit to the Wyoming judgment as required by Section 1, Article IV of the Constitution of the United States (R. 199-210).

The Colorado Supreme Court on February 13, 1940, affirmed the judgment of the district court (R. 247). In referring in its opinion to the assignments of cross error, the court said (R. 246):

> "Cross assignments of error may be summarized in the principal point that we failed to give full faith and credit to the Wyoming judgment. Our disposition of that question on the former hearing was: 'In this equitable action, it is not a matter of the courts of this state being concerned about the full faith and credit of the constitutional provisions relative to judgments of a sister state, the important question being as to the effect of the judgment of a sister state—palpably void on its face—upon the rights of citizens of this state who are parties to the equitable cause of action in this state. A court of this state unquestionably has the power to enjoin the enforcement of such a foreign judgment between the citizens of this state who are before the court in the state.' 101 Colo., supra, page 583. We adhere to that statement, which adherence disposes of the cross assignments."

A petition for rehearing was filed by the petitioners again raising the point that under Section 1, Article IV of the Constitution of the United States they had the right to have the Wyoming judgment given full faith and credit by the Colorado Courts (R. 247-249). Rehearing was denied on March 4, 1940 (R. 249).

SPECIFICATION OF POINTS TO BE URGED.

The petitioners contend:

1. The Wyoming judgment is valid and subsisting and must be given full faith and credit in the Colorado courts.

2. Personal service of process in Colorado upon an individual domiciled in Wyoming gave the Wyoming court jurisdiction to enter a judgment in personam.

3. The Colorado courts may not refuse to give full faith and credit to the Wyoming judgment because of alleged errors and inconsistencies in that judgment.

SUMMARY OF THE ARGUMENT.

The argument for the petitioners may be summarized as follows:

1. Full faith and credit must be given valid and subsisting judgments of courts on one state by courts of other states.

2. The Wyoming judgment is not void because of lack of jurisdiction over the person of the defendant.

   a. Defendant had his domicile within Wyoming.

   b. The Wyoming statutes permit constructive service on residents of the state.

   c. The exercise of jurisdiction by a state through its courts may be based upon extraterritorial service of process on an individual having his domicile wthin the state.

   d. There has been no denial of due process of law.

3. The Wyoming judgment is not void because of errors or irregularities.

   a. A judgment may not be impeached by a mere showing of errors and irregularities.

b. The nature of the alleged errors and irregularities.

c. The alleged errors and irregularities of the Wyoming judgment did not justify the nullification of the judgment in this collateral attack.

ARGUMENT.

I.

FULL FAITH AND CREDIT MUST BE GIVEN VALID AND SUBSISTING JUDGMENTS OF COURTS OF ONE STATE BY COURTS OF OTHER STATES.

The petitioners contend that the Wyoming judgment is valid and subsisting and accordingly must be given full faith and credit by the Colorado courts.

It is well settled by repeated decisions of this Court that the full faith and credit clause of the constitution requires that the judgment of a state court which had jurisdiction of the parties and the subject matter in the suit shall be given, in the courts of every other state, the same credit, validity and effect which it has in the state where it was rendered and be equally conclusive on the merits. (*Roche v. McDonald*, 275 U. S. 449, 451, 48 S. Ct. 142, 143; *Adam v. Saenger*, 303 U. S. 59, 62, 58 S. Ct. 454, 456; *Titus v. Wallick*, 306 U. S. 282, 291, 59 S. Ct. 557, 562).

It is also well settled that notwithstanding the full faith and credit provision of the United States Constitution it may be shown in a collateral proceeding that the court in any state which renders a judgment did not have jurisdiction. (*Grover and Baker S. M. Co. v. Radcliffe*, 137 U. S. 287, 294, 11 S. Ct. 92, 94). Consequently it becomes necessary to consider whether or not the Wyoming judgment is void because of lack of jurisdiction.

II.

THE WYOMING JUDGMENT IS NOT VOID BECAUSE OF LACK OF JURISDICTION OVER THE PERSON OF THE DEFENDANT.

a. Defendant had his domicile within Wyoming.

R. D. Meyer, respondent's intestate against whom the Wyoming judgment was entered, had his domicile within the state of Wyoming. The Deputy Commissioner of Public Lands for Wyoming identified defendant's Exhibits 2 to 13 which were applications for leases addressed to the Commissioner of Public Lands for the State of Wyoming made at various dates from November 10; 1920 to April 9, 1932, for the leasing of mineral lands within that state. (R. 139, 140, 164, 165). In each of these Meyer stated that he was a resident and taxpayer of Wyoming. For an example, Exhibit 7 dated March 16, 1928 contained the following statement (R. 164):

> "I am a resident of the State of Wyoming, I am a voter and taxpayer in Carbon County, Wyoming."

Likewise, Exhibit 12. dated April 9, 1932, contained the following statement (R. 165):

> "I have been a bona fide resident and taxpayer of Wyoming for 20 years."

A shorthand reporter testified that he took a deposition on oral interrogatories pursuant to a dedimus issued out of the Wyoming court on January 28. 1931, and that in response to the question as to whether he held his legal residence in Wyoming Mr. Meyer stated (R. 138):

> "Well, of course, that is a question that I am not qualified to properly elucidate. I can only say for your information that I am a taxpayer in Carbon County, Wyoming, and that I have always had a feeling that some day I might return there and reestablish my

association in Wyoming. In fact I have never voted in Denver."

At the conclusion of the first trial herein the district court found that R. D. Meyer was legally domiciled in the state of Wyoming at the date of the commencement of the action and at the date of the decree and judgment (R. 141). This finding has never been set aside.

b. The Wyoming statutes permit constructive service on residents of the state.

Section 5636 Wyoming Compiled Statutes 1920 (now Wyoming R. S. 1931, Sec. 89-817—see Appendix A) permit service by publication.

> "In actions where the defendant, being a resident of this state, has departed from the county of his residence with the intent to delay or defraud his creditors, or to void the service of a summons, or keeps himself concealed with like intent" (R. 12).

Section 5641, Wyoming Compiled Statutes 1920 (now Wyoming R. S. 1931, Sec. 89-822—see Appendix A) provides that in all cases where service may be made by publication personal service of a copy of the summons and petition may be made out of the state (R. 14). Meyer was personally served with summons in Denver, Colorado, on March 30, 1928 (R. 14-15).

Counsel for Milliken in the Wyoming action filed therein an "Affidavit for Constructive Service" alleging that Meyer was a resident of Wyoming and that since the filing of the action he had remained out of the state of Wyoming and concealed himself so that process could not be served upon him (R. 9-10). Meyer entered no appearance in the Wyoming case upon advice of counsel (R. 54). He appeared as a witness by giving his deposition (R. 137-138). Meyer was at all times fully informed and aware of the entry of the Wyoming judgment of July 11, 1931 (R. 98).

c. The exercise of jurisdiction by a state through its courts may be based upon extraterritorial service of process on an individual having his domicile within the state.

Every state has the authority to provide the means by which its own citizens may be brought before its courts. A state has jurisdiction over an individual domiciled in the state and can exercise jurisdiction over him through its courts by entering a judgment imposing a personal liability upon him. Such a judgment is valid and will be so recognized by other states. (*Restatement of the Law of Conflict of Laws*, Sections 77, 79; *Freeman on Judgments*, Fifth Edition, Section 1376.)

This case is distinguishable from *Pennoyer v. Neff*, 95 U. S. 714; 24 L. Ed. 565. In that case this Court ruled against the validity of an Oregon judgment based upon service of process by publication on a defendant who was a non-resident. In the instant case the Wyoming judgment is based upon the service of process upon an individual domiciled in Wyoming by the delivery of a copy of such process to the individual in the state of Colorado.

By reason of the relationship between the state and its citizens which affords protection to him and his property and imposes upon him duties as such he may be charged by judgment in personam binding on him every where as the result of legal proceedings instituted and carried on in conformity to the statutes of the state (*Hunt v. Hunt*, 72 N. Y. 217, 241; *Huntley v. Baker*, 33 Hun. (NY) 578, 580).

There appears to be no decision of this Court holding contra to the principle for which we contend. In *McDonald v. Mabee*, 243 U. S. 90, 37 S. Ct. 343, this Court held invalid a Texas judgment in personam based upon service by publication. The defendant was domiciled in Texas, left there with the intent to establish a home elsewhere, returned to Texas for a short time and later established his domicile

in Missouri. The service by publication was after his final departure from the state. The court held that service by publication "is not sufficient notice to bind a person who has left a state intending not to return" (243 U. S. 92, 37 S. Ct. 344). In the case at bar the defendant Meyer is shown to have been domiciled in Wyoming at the time of the commencement of the suit, at the time of the service of the summons, and at the time of the entry of the decree. He himself, in his deposition, indicated an intent to return to that state.

The principle for which the petitioners contend has been upheld in the state courts. We have cited supra the New York cases of *Hunt v. Hunt* and *Huntley v. Baker.* In *Northern Aluminum Company v. Law*, 157 Md. 641, 147 At. 715, the Maryland court of appeals upheld a judgment obtained in the province of Ontario, Canada, against an individual domiciled in Ontario who was personally served with summons in Baltimore, Maryland, the court holding that every state has authority to provide the means by which its own citizens may be brought before its courts and that judgments obtained upon such persons are not open to question on that ground in other states,

In *Ory v. Bosio*, 178 La. 221, 151 So. 187, the Supreme Court of Louisiana upheld the validity of a Louisiana statute authorizing the maintenance of a personal injury action against a temporarily absent resident of the state through the appointment of a curator ad hoc upon whom service may be had.

In *Becker v. Becker*, 218 S. W. 542 (Texas Civil Appeals), a personal money judgment in a divorce action based upon personal service as provided by Texas statute on a citizen of Texas while he was temporarily in Kansas City, Mo., was upheld. The court distinguished the case from

that of *McDonald v. Mabee*, supra, by saying (218 S. W. 545):

> "The court did not hold that when a citizen is absent from his state the courts thereof are as powerless with respect to the rendition of a personal judgment against him as if he resided in another state."

The decision in *Raher v. Raher*, 150 Iowa 511, 129 N. W. 494, is contrary to the above decisions. Particular attention is directed to the dissenting opinion in the Raher case.

Meyer was domiciled in Wyoming and was taking advantage of such domicile in securing preferences in mineral leases. He should not be permitted to avoid the obligations imposed by the law of his domicile.

d. There had been no denial of due process of law.

The Wyoming judgment did not deprive the defendant Meyer of property without due process of law. He was then domiciled in Wyoming. He was personally served with a copy of the summons in Denver, Colorado, on March 30, 1928 (R. 14-15). He had ample opportunity to be heard by the Wyoming court. In January, 1931, his deposition was taken (R. 137-138). He did not appear upon advice of counsel (R. 54). He knew of the entry of the decree (R. 98).

The respondent does not question the jurisdiction of the Wyoming court over the subject matter. By Article V, Section 10, Wyoming Constitution, the Wyoming district courts are established as courts of general jurisdiction.

Meyer had actual notice of the pendency of this action against him in a court of his state. He did not avail himself of the opportunity to be heard. Under such circumstances he may not now complain of the unconstitutionality of the Wyoming statute and of the validity of the Wyoming judgment upon the ground of a denial of due process.

It has been held by this Court in *Wuchter v. Pizzutti*, 276 U. S. 13, 24, 48 S. Ct. 259, 262, after citing *McDonald v. Mabee*, supra, and other cases:

> "These cases and others indicate a general trend of authority towards sustaining the validity of service of process, if the statutory provisions in themselves indicate that there is reasonable probability that if the statutes are complied with, the defendant will receive actual notice, and that is the principle that we think should apply here."

In the Wuchter case this Court held invalid a New Jersey statute, providing for service of process on non-residents in suits for injuries by the negligent operation of automobiles on its highways by service upon the New Jersey secretary of state, for the reason that the statute did not contain a provision making it reasonably probable that notice of the service on the secretary would be communicated to the non-resident defendant.

In *Hess v. Pawloski*, 274 U. S. 352, 47 S. Ct. 632, this Court upheld the validity of a Massachusetts statute similar to the New Jersey statute considered in the Wuchter case upon the grounds that the provision of the Massachusetts statute requiring notice of service on the registrar to be forwarded by registered mail to the defendant, and making the defendant's return receipt and plaintiff's affidavit sufficient service, satisfied the requirements as to notice. The court then pointed out (274 U. S. 356) that the statute required that the defendant should actually receive and receipt for the notice of the service and a copy of the process.

In the case at bar the Wyoming statute provides for personal service and such personal service was actually made by handing to the defendant a copy of the summons together with a copy of the petition (R. 15). The defendant had actual notice and full opportunity to be heard.

III.

THE WYOMING JUDGMENT IS NOT VOID BECAUSE OF ERRORS OR IRREGULARITIES.

a. A judgment may not be impeached by a mere showing of errors and irregularities.

The Colorado Supreme Court held the Wyoming judgment to be void upon the ground that it did not conform to the findings of the Court. The general rule is that when jurisdiction of an action sufficiently appears, or is satisfactorily shown, the judgment rendered therein cannot be impeached or avoided in another state on account of any alleged errors or irregularities committed by the court which rendered it and this is true although the error is such that on appeal the judgment would have been reversed.

In *Fauntleroy v. Lum*, 210 U. S. 230, 28 S. Ct. 641, this Court considered an action upon a Missouri judgment brought in a court of Mississippi. In holding that the Mississippi court should give effect to the Missouri judgment, the court said that whether the ruling of the Missouri court was right or wrong there could be no question that the judgment was conclusive in Missouri on the validity of the cause of action. After referring to the principle that a judgment is conclusive as to all the *media concludendi* (*U. S. v. California and Oregon Land Company*, 192 U. S. 355, 358, 24 S. Ct. 266, 267), the court announced the following rule: (210 U. S. 230, 237; 28 S. Ct. 643),

> "* * * it needs no authority to show that it (the Missouri judgment) can not be impeached either in or out of the state by showing that it was based upon a mistake of law."

In *Rooker v. Fidelity Trust Company*, 263 U. S. 413. 415, 44 S. Ct. 149, 150, this Court said:

> "If the decision was wrong, that did not make

> the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed or modified it would be an effective and conclusive adjudication."

See also *Dugas v. American Surety Company of New York*, 300 U. S. 414, 425, 57 S. Ct. 515, 519.

The rule applicable here is the same as that applied in cases involving the principle of *res adjudicata*. Such rule was stated by this Court in the case of *U. S. v. Moser*, 266 U. S. 236, 242, 45 S. Ct. 66, 67, from which we quote:

> "But a *fact, question or right* distinctly adjudged in the original action cannot be disputed in a subsequent action, even though the determination was reached upon an erroneous view or by an erroneous application of the law."

To the same effect is the rule laid down in *Reed v. Allen*, 286 U. S. 191, 201, 52 S. Ct. 532, 534 from which we quote:

> "* * * a judgment not set aside on appeal or otherwise is equally effective as an estoppel upon the points decided, whether the judgment be right or wrong."

b. The nature of the alleged errors and irregularities.

The Colorado Supreme Court held void the Wyoming judgment solely upon the ground that after the court found that Milliken had assigned to the Transcontinental Company his claim against Meyer by the agreement of May 3, 1924, it could not then enter judgment upon the claim in favor of Milliken (R. 232). It must be remembered that the assignee of the claim, Transcontinental Oil Company, was before the Wyoming court and had pleaded this contract in defense of the cause of action asserted against it by Milliken. The attorneys for the Transcontinental Company approved

the form of the Wyoming judgment (R. 39). One of the petitioners herein, The Ohio Oil Company, pleaded in this cause as a third defense and as a cross complaint against the Millikens the aforesaid agreement of May 3, 1924 (R. 83). It thus appears that the assignee of Milliken was a party to the Wyoming case and did not object to the entry of the judgment against Meyer upon the assigned claim. Likewise, the successors in interest of such assignee are parties to this cause and one of them has specifically pleaded the May 3, 1924 agreement (R. 95). Meyer may not defeat the claim of Milliken by relying upon the assignment when both the assignor and the assignee are parties to the litigation and make no objection to the judgment in favor of the assignor upon the assigned claim.

There is no showing whatsoever as to the evidence which was adduced before the Wyoming court. A judgment is presumed to be valid and it must be presumed that a sufficient showing was made to satisfy the Wyoming court that Milliken was entitled to his judgment particularly when the contract of assignment was before the court and the assignee specifically approved the form of judgment entered. Meyer may not take advantage of rights belonging solely to the assignee and its successors in interest who are parties to this litigation. In any event the alleged error does not render the judgment void. If a mistake was made it could have been corrected on appeal.

Wyoming statutes particularly provide full procedure for the correction of alleged irregularities or mistakes of law. The applicable statutes are appended hereto as Exhibit B (see also R. 106-108, 111).

c. The alleged errors and irregularities of the Wyoming judgment do not justify the nullification of the judgment in this collateral attack.

This is a collateral proceeding to impeach a Wyoming

judgment. The rule is well settled that errors and irregularities, however, gross, do not render a judgment absolutely void and are not available on collateral attack. The pertinent rule has been announced by this Court in *Baltimore S. S. Company v. Phillips*, 274 U. S. 316, 325, 47 S. Ct. 600, 604):

> "A judgment merely voidable because based upon an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review and not by bringing another action upon the same cause."

Likewise, in *Chandler v. Peketz*, 297 U. S. 609, 612, 56 S. C. 602, 604, this Court said:

> "Errors or procedural irregularities, if any, were subject to correction by the court itself or upon appeal but afforded no warrant for collateral attack upon the order."

The asserted errors and irregularities do not make the Wyoming judgment void on its face. It is a valid and subsisting judgment and may not be successfully impeached in this collateral proceeding.

CONCLUSION.

The Wyoming judgment debtor took no action during his lifetime to set aside the judgment. He was domiciled in that state and took advantage of the protection and preferences given by its laws. Legal proceedings against him in conformity with Wyoming laws are binding on him everywhere. The administratrix of his estate may not now impeach the judgment in this collateral attack. The decision of the Colorado Supreme Court refusing to give full faith and credit to that judgment because of mere errors and irregularities is a denial to the petitioners of a right under the Federal Constitution.

We ask that a writ of certiorari be granted and that upon final hearing the judgment be reversed.

Respectfully submitted,

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DENVER, COLORADO, May, 1, 1940.

APPENDIX A.

Pertinent Provisions of Statutes of Wyoming Relating to Constructive Service of Summons.

Section 5636, Wyoming Compiled Statutes 1920 now Section 89-817, Wyoming Revised Statutes 1931 (R. 11-14), provides:

> "Service by publication may be had in either of the following cases:
>
> * * * * * * * * * *
>
> "6. In actions where the defendant, being a resident of this state, has departed from the county of his residence with the intent to delay or defraud his creditors, or to avoid the service of a summons, or keeps himself concealed with like intent;"

Section 5641, Wyoming Compiled Statutes 1920 now Section 89-822, Wyoming Revised Statutes 1931 (R. 14), provides:

> "In all cases where service may be made by publication under the provisions of this article, personal service of a copy of the summons and the petition in said action may be made out of the state, and such summons when issued for service out of the state, shall be returnable at the option of the party having it issued, on the second, third or fourth Monday after its date, and shall require the defendant or defendants named therein to answer the petition in said action on or before the third Saturday after the return day named in said summons."

APPENDIX B.

Wyoming Statutes Relating to Vacation, Modification or Correction of Judgments and Decrees and the Time Within Which Such Proceedings Must be Taken.

Section 5923, Wyoming Compiled Statutes 1920 now Section 89-2301, Wyoming Revised Statutes 1931 (R. 106-108), provides:

> "A district court may vacate or modify its own judgment or order, after the term at which the same was made: * * *
>
> "(2). By a new trial granted in proceedings against defendants, constructively summoned, as provided in Sec. 89-817;
>
> "(3). For mistake, neglect or omission of the clerk, or irregularity in obtaining a judgment or order;
>
> "(4). For fraud practiced by the successful party in obtaining a judgment or order."

Section 5926, Wyoming Compiled Statutes 1920 now Section 89-2304 Wyoming Revised Statutes 1931 (R. 106-108), provides:

> "The proceedings to correct mistakes or omissions of the clerk, or irregularity in obtaining a judgment order, shall be by motion, upon reasonable notice to the adverse party, or his attorney in the action; but the motion to vacate a judgment because of its rendition before the action regularly stood for trial, can be made only in the first three days of the succeeding term."

Section 5927, Wyoming Compiled Statutes 1920 now Wyoming Revised Statutes 1931, Sec. 89-2305 (R. 106-108), provides:

> "The proceedings to vacate the judgment or order on the grounds specified in subdivisions four, five, six, seven, eight, nine and ten of Section 89-2301, shall be by petition, verified by affidavit setting forth the judgment or order, the grounds to vacate or modify it, and if the party applying was defendant, the de-

fense to the action, and on such petition a summons shall issue and be served as in the commencement of an action."

Section 5932, Wyoming Compiled Statutes 1920 now Wyoming Revised Statutes 1931, Sec. 89-2301 (R. 106-108), provides:

"Proceedings to vacate or modify a judgment or order for the causes mentioned in subdivisons four, five and seven of Section 89-2301, must be commenced within two years after the judgment was rendered, or order made, unless the party entitled thereto is an infant or a person of unsound mind, and in cases of such disability, within two years after the removal thereof; proceedings for the causes mentioned in subdivisions three and six of the same section shall be commenced within three years, and in subdivision nine within two years after the defendant has notice of the judgment."

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